

SB 379 – Generally revise county zoning laws
Sponsor: Sen. Alan Olson

Proposed Zoning Procedure and Protest Right Bill Talking Points

- **This bill creates a more constitutionally sound protest right, which gives counties more control:** Existing law, 76-2-101(5) and 76-2-205(6) is the subject of two constitutional challenges pending in Montana courts. The existing protest provisions allow landowners to protest and *completely halt* the proposed zoning regulation or amendment for one year. Should a court find the existing protest right unconstitutional, landowners will be left powerless against detrimental zoning regulations. As such, this bill proposes a new protest right that is constitutionally sound, while providing landowners much-needed protections against detrimental zoning actions.
- **The bill strikes a better balance between landowners' rights and local regulation:** Given that the bill takes the ability to override proposed zoning regulations from landowners, it necessarily must provide them some protections on balance. It does this by requiring that counties: 1. are explicit regarding the health, safety and welfare goals they are seeking to protect through zoning, 2. balance these goals with the economic impact on affected landowners, and 3. make sure no less restrictive means exist to further their goals. *Despite this heightened process, it leaves the final decision in the county's hands* unless 1. a diminution of 30% of the affected land's value would occur and the stated purpose of the zoning action does not outweigh this diminution or 2. less restrictive means exist. In such cases, the proposed zoning action is not a valid use of the commissioners' police power, and should necessarily be stopped.
- **The bill comports with existing Montana law:** The requirement that commissioners conduct an economic analysis upon successful protest mirrors the Private Property Takings Act's (MCA 2-10-101, et seq.) Guidelines that state agencies follow to determine whether a government action may be a taking. The bill's provision that diminution of the affected property's value by 30% or more creates a prima facie negative economic impact is also based on these guidelines, in which a taking is implicated where diminution of the affected property by 30% or more will result. The bill's requirement that commissioners issue written findings and consider evidence submitted by interested persons is similar to the process required in subdivision application review hearings. The bill furthers Montana Constitutional provisions recognizing landowners' rights, including Article II, Sections 3 and 29, and statutory protections for large landowners in MCA 76-2-901.
- **The bill is similar to other states' laws:** The bill's structure, which requires a heightened vote requirement by commissioners where 25% of affected landowners protest, is similar to 24 other states' protest provisions. It removes potential unconstitutional legislative delegation issues by requiring only that all county commissioners (as to 3 member commissions) vote to approve a proposed zoning regulations upon successful protest by affected landowners. As with all other state zoning laws, it leaves the ultimate decision up to the counties.
- **The bill does not require a significant increase in county resources or expenditures:** The bill only requires commissioners to conduct an economic analysis based on evidence *submitted by interested persons*. No separate investigation or analysis by the county is necessary, and therefore, the cost and resources required for this required analysis will be minimal, if any.
- **The bill ensures landowners' substantive due process rights are observed:** The requirement that a zoning decision's health, safety and welfare goals are "proportional" to its impact on affected landowners merely ensures that the zoning decision has a "substantial bearing" on the public health, safety, morals or general welfare of the community, as substantive due process and the lawful exercise of the police power require. *Yurczyk v. Yellowstone County*, 319 Mont. 169, 83 P.3d 266 (2004); *Yellowstone Valley Elec. v. Ostermiller*, 187 Mont. 8, 608 P.2d 491 (1980).